

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S BY ZOOM:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEAN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
VANESSA BAEHR-JONES
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

A P P E A R A N C E S BY ZOOM: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP
BY: KEVIN M. DOWNEY
LANCE A. WADE
KATHERINE A. TREFZ
AMY M. SAHARIA
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: JEFFREY COOPERSMITH
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN A. CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA

AUGUST 11, 2020

2 P R O C E E D I N G S

10:09AM 3 (COURT CONVENED AT 10:09 A.M.)

10:09AM 4 THE COURT: THANK YOU. GOOD MORNING. LET'S CALL

10:09AM 5 18-258. THIS IS UNITED STATES VERSUS HOLMES AND BALWANI.

10:09AM 6 THANK YOU, MS. KRATZMANN, FOR SIGNING EVERYBODY IN.

10:09AM 7 THIS IS A VIDEO HEARING, A VIDEO CONFERENCE HEARING. I

10:09AM 8 KNOW EVERYONE HAS JUST IDENTIFIED THEMSELVES, BUT WE'RE ON THE

10:09AM 9 RECORD HERE.

10:09AM 10 LET ME ASK THE PARTIES TO ONCE AGAIN PLEASE STATE YOUR

10:10AM 11 APPEARANCE FOR THE RECORD. WE'LL START WITH THE GOVERNMENT.

10:10AM 12 WHO APPEARS FOR THE GOVERNMENT?

10:10AM 13 MR. LEACH: THANK YOU, YOUR HONOR.

10:10AM 14 ROBERT LEACH ON BEHALF OF THE UNITED STATES.

10:10AM 15 I'M JOINED BY JEFF SCHENK, JOHN BOSTIC, AND

10:10AM 16 VANESSA BAEHR-JONES.

10:10AM 17 THE COURT: THANK YOU. GOOD MORNING TO EACH OF YOU.

10:10AM 18 AND FOR DEFENDANT HOLMES WHO APPEARS?

10:10AM 19 MR. WADE: GOOD MORNING, YOUR HONOR.

10:10AM 20 IT'S LANCE WADE FROM WILLIAMS & CONNOLLY ON BEHALF OF

10:10AM 21 MS. HOLMES.

10:10AM 22 WITH ME THIS MORNING, OR THIS AFTERNOON ON OUR COAST, IS

10:10AM 23 MR. DOWNEY, MS. SAHARIA, AND MS. TREFZ.

10:10AM 24 I'LL ALSO NOTE THAT MS. HOLMES IS PRESENT AS WELL. AND

10:10AM 25 CONSISTENT WITH PRIOR DIRECTION FROM THE COURT, WE'VE MADE

10:10AM 1 ARRANGEMENTS TO BE ABLE TO COMMUNICATE WITH HER IN THE EVENT A
10:10AM 2 BRIEF RECESS IS NECESSARY.

10:10AM 3 THE COURT: THANK YOU. GOOD MORNING TO EACH OF YOU.

10:10AM 4 LET ME ASK YOU, MR. WADE, DO YOU AND YOUR CLIENT CONSENT
10:11AM 5 TO PROCEEDING BY WAY OF VIDEO CONFERENCING RECOGNIZING THAT
10:11AM 6 YOUR CLIENT DOES HAVE THE RIGHT TO HAVE A PERSONAL APPEARANCE
10:11AM 7 IN THE COURT?

10:11AM 8 BUT AS I'VE STATED BEFORE, YOU'VE HEARD ME STATE THIS,
10:11AM 9 BECAUSE OF THE COVID CRISIS OUR COURTS HAVE DEVELOPED
10:11AM 10 PROTOCOLS, INCLUDING GENERAL ORDERS, TO MITIGATE THE PRESENCE
10:11AM 11 OF THE PUBLIC FOR THEIR SAFETY AND THE SAFETY OF ALL OF THE
10:11AM 12 LITIGANTS.

10:11AM 13 RECOGNIZING THAT, DO YOU AGREE TO PROCEED BY WAY OF THIS
10:11AM 14 VIDEO CONFERENCE?

10:11AM 15 MR. WADE: WE DO CONSENT TO APPEARANCE IN THIS
10:11AM 16 MANNER, YOUR HONOR.

10:11AM 17 THE COURT: THANK YOU. THANK YOU VERY MUCH.

10:11AM 18 AND FOR DEFENDANT BALWANI?

10:11AM 19 MR. COOPERSMITH: GOOD MORNING, YOUR HONOR. THIS IS
10:11AM 20 JEFF COOPERSMITH FROM ORRICK, HERRINGTON & SUTCLIFFE FOR
10:11AM 21 MR. BALWANI.

10:11AM 22 AND I'M JOINED WITH STEPHEN CAZARES ON THE VIDEO.

10:11AM 23 AND MR. BALWANI IS ALSO PRESENT.

10:11AM 24 AS MR. WADE NOTED, WE CAN REACH MR. BALWANI SEPARATELY ON
10:11AM 25 A SEPARATE LINE IF THAT IS EVER NECESSARY.

10:12AM 1 THE COURT: THANK YOU. AND DOES YOUR CLIENT ALSO
10:12AM 2 CONSENT TO PROCEEDING BY WAY OF A VIDEO CONFERENCE THIS
10:12AM 3 MORNING?
10:12AM 4 MR. COOPERSMITH: YES, YOUR HONOR.
10:12AM 5 THE COURT: THANK YOU. MR. COOPERSMITH, I'M GOING
10:12AM 6 TO ASK YOU IF IT'S AT ALL POSSIBLE FOR YOU TO MOVE YOUR DEVICE
10:12AM 7 CLOSER TO YOU BY THE MICROPHONE. THAT MIGHT BENEFIT THE COURT
10:12AM 8 REPORTER.
10:12AM 9 ALL RIGHT. THANK YOU.
10:12AM 10 MR. COOPERSMITH: YES, YOUR HONOR, I'LL DO THAT.
10:12AM 11 THE COURT: GREAT. THANK YOU.
10:12AM 12 SO WE SET TODAY'S HEARING AS ANOTHER STATUS CONFERENCE IN
10:12AM 13 REGARDS TO OUR LAST HEARING AND MY THOUGHTS ABOUT THE TRIAL IN
10:12AM 14 THIS MATTER.
10:12AM 15 I HAVE RECEIVED YOUR DOCUMENT 482, WHICH IS YOUR JOINT
10:12AM 16 STATUS REPORT. THANK YOU FOR YOUR EFFORTS IN PUTTING THAT
10:12AM 17 TOGETHER AND FOR MEETING AND CONFERRING AND COMING UP WITH
10:12AM 18 DATES. I APPRECIATE IT.
10:12AM 19 I APPRECIATE YOUR EFFORTS TO MEET TO, AS I SAID BEFORE,
10:12AM 20 ADVANCE THE TRIAL AS BEST WE CAN, GIVEN THE CURRENT PANDEMIC
10:12AM 21 SITUATION.
10:12AM 22 THE TRIAL DATE IS ONE THING THAT WE'RE TRYING TO JUGGLE
10:13AM 23 AND CAPTURE FOR YOU, BUT THE WORK BEHIND THE TRIAL AS YOU ALL
10:13AM 24 KNOW, AND YOU'RE EXPERIENCED LITIGATORS, THAT'S REALLY WHERE
10:13AM 25 THE MEAT OF THE CASE IS, ISN'T IT, WITH THE WORK BEFORE. AND

10:13AM 1 THIS SCHEDULE THAT YOU'VE PRESENTED IS A GOOD SCHEDULE.

10:13AM 2 I SHOULD TELL I KNOW THAT YOU TOOK NO PRIDE IN AUTHORSHIP.

10:13AM 3 YOU OFFERED IT TO THE COURT SUGGESTING THAT THE COURT LOOK AT

10:13AM 4 IT AND MAKE SOME CHANGES. AND I'VE DONE THAT. BUT I WANTED TO

10:13AM 5 THANK YOU IN ADVANCE FOR GIVING ME AT LEAST THE INITIAL

10:13AM 6 SCHEDULE FROM WHICH I COULD WORK.

10:13AM 7 SO WHAT I WANT TO DO IS TO -- FOR PURPOSES OF THIS

10:13AM 8 MORNING, OF COURSE YOU'LL RECEIVE AN ORDER, YOU'LL RECEIVE A

10:13AM 9 HARD COPY OR AT LEAST AN ELECTRONIC COPY AS WE POST IT, BUT I

10:13AM 10 DO WANT TO GO OVER THE DATES.

10:13AM 11 THERE ARE SOME DATES THAT I'M GOING TO CHANGE, AND

10:13AM 12 CANDIDLY, IT MOVES THINGS UP ABOUT A WEEK OR TWO.

10:14AM 13 I DON'T THINK -- FROM MY PERSPECTIVE IT'S NOT DRAMATIC.

10:14AM 14 FROM YOUR PERSPECTIVE WITH THE EXCELLENT TEAMS THAT BOTH SIDES

10:14AM 15 HAVE PUT TOGETHER HERE, I THINK IT'S SOMETHING THAT, IT'S

10:14AM 16 SOMETHING THAT YOU CAN ACCOMPLISH WITH THE SAME EXCELLENCE THAT

10:14AM 17 YOU'VE PRESENTED IN ALL OF THE OTHER ENDEAVORS IN THIS CASE.

10:14AM 18 SO LET ME TELL YOU THAT JUST GOING DOWN YOUR LIST, AND

10:14AM 19 LET'S START WITH -- OF COURSE YOU KNOW THAT NEXT MONDAY'S

10:14AM 20 HEARING DATE REGARDING YOUR MOTION HAS BEEN VACATED. THAT'S

10:14AM 21 UNDER SUBMISSION, AND I'LL GET AN ORDER OUT TO YOU SOON ON

10:14AM 22 THAT.

10:14AM 23 SO WE'LL VACATE THE MONDAY, AUGUST 17TH HEARING DATE.

10:14AM 24 THE NEXT EVENT WOULD BE THE PRETRIAL MOTIONS, YOUR 12(B)

10:14AM 25 MOTIONS, AND I'M GOING TO MOVE THAT, THAT IS, THE DATES TO BE

10:14AM 1 FILED TO FRIDAY, AUGUST 28TH.

10:15AM 2 BUT LET ME ASK A QUESTION, DO YOU -- A QUESTION THAT WE

10:15AM 3 WERE DISCUSSING IN CHAMBERS, CANDIDLY, WAS, GEE, I WONDER HOW

10:15AM 4 MANY MOTIONS THERE ARE GOING TO BE.

10:15AM 5 NOW, I KNOW YOU CAN'T GIVE ME A NUMBER TODAY PERHAPS, AND

10:15AM 6 I CERTAINLY WOULDN'T HOLD YOU TO IT, BUT THAT IS A QUESTION,

10:15AM 7 HOW MANY OF THESE MOTIONS, 12(B) MOTIONS CAN WE ANTICIPATE?

10:15AM 8 AND I DON'T KNOW, MR. WADE, IF IT'S FAIR TO ASK YOU TO

10:15AM 9 COMMENT, YOU OR MR. DOWNEY ON THAT, OTHER THAN TO SAY YOU'LL DO

10:15AM 10 WHAT YOU NEED TO DO TO SUPPORT YOUR CLIENT'S INTEREST IN THE

10:15AM 11 CASE. I RECOGNIZE THAT.

10:15AM 12 BUT -- GO AHEAD.

10:15AM 13 MR. WADE: YES. THANK YOU. THANK YOU, YOUR HONOR.

10:15AM 14 I THINK WE NOTED IN A PREVIOUS HEARING WE EXPECT IN THE

10:15AM 15 NEIGHBORHOOD OF FOUR TO SIX MOTIONS.

10:15AM 16 OBVIOUSLY UNTIL YOU WRITE THEM AND COMPLETE ALL OF THE

10:15AM 17 RESEARCH, YOU NEVER KNOW FOR CERTAIN WHETHER YOU'LL FILE IT,

10:16AM 18 BUT WE ANTICIPATE FOUR TO SIX MOTIONS.

10:16AM 19 THE COURT: OKAY. THANK YOU FOR THAT. I APPRECIATE

10:16AM 20 THAT.

10:16AM 21 NEXT, GOING DOWN ON THE SCHEDULE THE GOVERNMENT TO SERVE

10:16AM 22 ANY SUPPLEMENT TO 404(B) AND EXPERT DISCLOSURES. I AM NOT

10:16AM 23 GOING TO -- LET'S SEE, THAT SHOULD BE MONDAY, SEPTEMBER 14TH.

10:16AM 24 THE RESPONSES TO THE 12(B)'S IS SOMETHING THAT I HAVE

10:16AM 25 MOVED, AND I'VE MOVED THAT TO SEPTEMBER 20TH, MR. LEACH,

10:16AM 1 SEPTEMBER 20, AND THAT WOULD BE RESPONSES TO THE 12(B) MOTIONS.

10:16AM 2 DEFENDANTS SERVE WITNESS AND EXHIBIT LISTS FOR THE

10:16AM 3 CASE-IN-CHIEF IS SEPTEMBER 29.

10:16AM 4 DEFENDANTS SERVING RULE 16 SUMMARY FOR EACH EXPERT WITNESS

10:16AM 5 FOR CASE-IN-CHIEF IS OCTOBER 6TH, TUESDAY, OCTOBER 6TH.

10:16AM 6 THE NEXT REAL CHANGE IS THE REPLIES FOR THE 12(B) MOTIONS,

10:16AM 7 AND THAT WILL BE FRIDAY, OCTOBER 2ND, FRIDAY, OCTOBER 2ND.

10:17AM 8 I'M HOPING THAT WE CAN DO HEARINGS ON THE 12(B) MOTIONS ON

10:17AM 9 TUESDAY, OCTOBER 6TH.

10:17AM 10 THE GOVERNMENT SHALL SERVE RULE 16 SUMMARIES FOR EXPERT

10:17AM 11 WITNESS AND REBUTTAL TO DEFENSE EXPERTS ON OCTOBER 27TH.

10:17AM 12 THE STATUS CONFERENCE REGARDING THE TRIAL DATE, I'M GOING

10:17AM 13 TO MOVE A DAY TO WEDNESDAY -- EXCUSE ME, DECEMBER 2ND,

10:17AM 14 WEDNESDAY, DECEMBER 2ND.

10:17AM 15 AND, MS. KRATZMANN, WHAT TIME CAN WE, CAN WE HAVE THAT

10:17AM 16 HEARING?

10:18AM 17 THE CLERK: YOUR HONOR, THAT CAN BE DECEMBER 2ND,

10:18AM 18 WEDNESDAY AT 10:00 A.M.

10:18AM 19 THE COURT: ALL RIGHT. THANK YOU. LET'S DO THAT,

10:18AM 20 COUNSEL, 10:00 A.M. AGAIN, THAT IS A STATUS CONFERENCE

10:18AM 21 REGARDING TRIAL I'LL CALL IT. AND I'M SETTING THAT SO WE CAN

10:18AM 22 CONTINUE TO MONITOR CONDITIONS AND GET AN UPDATE ON THE GENERAL

10:18AM 23 STATUS OF THINGS.

10:18AM 24 THE NEXT DATE THAT HAS SOME CHANGE IN IT, AND I NOTE THAT

10:18AM 25 IN THE SCHEDULE THAT YOU'VE PRESENTED, THE WEEK -- EXCUSE ME,

10:18AM 1 THE MONTH OF NOVEMBER WAS PRETTY VACANT, AND I EXPECT THAT'S
10:18AM 2 FOR HOLIDAY PURPOSES AND ALSO REGROUPING.

10:18AM 3 WHAT I'M GOING TO DO IS TO SET THE MOTION IN LIMINE AND
10:18AM 4 MOTIONS REGARDING EXPERTS DUE ON FRIDAY, NOVEMBER 20TH. I'D
10:18AM 5 LIKE TO DO THAT.

10:19AM 6 I'M ANTICIPATING -- AND THIS IS JUST STRATEGIC PLANNING ON
10:19AM 7 MY PART IN THE SPIRIT OF FULL DISCLOSURE. IT MAY BE THAT IT
10:19AM 8 MAKES MORE SENSE TO HAVE OUR MOTION IN LIMINE HEARING A
10:19AM 9 SEPARATE STANDALONE DATE APART FROM OUR PRETRIAL CONFERENCE. I
10:19AM 10 KNOW TYPICALLY THOSE TWO THINGS ARE CONJOINED, WE DO THOSE
10:19AM 11 TOGETHER.

10:19AM 12 I'M JUST ANTICIPATING IT MIGHT MAKE SCHEDULING SENSE FOR
10:19AM 13 US TO HAVE OUR MIL MOTIONS DONE ON A STANDALONE DATE, AND
10:19AM 14 THAT'S WHY I SET THIS.

10:19AM 15 RESPONSES TO MOTION IN LIMINES AND MOTIONS REGARDING
10:19AM 16 EXPERTS WOULD BE DUE DECEMBER 18.

10:19AM 17 AND I KNOW MR. LEACH IS REALLY EAGER TO HAVE ME TO
10:19AM 18 SCHEDULE SOMETHING THROUGH THE DECEMBER HOLIDAY SEASON. BUT,
10:19AM 19 MR. LEACH, I'M GOING TO BACK OFF FROM THAT AND RATHER WE'LL
10:19AM 20 HAVE THE REPLIES FOR THE MOTION IN LIMINES AND EXPERTS, THOSE
10:19AM 21 WILL BE DUE ON FRIDAY, JANUARY 15TH, JANUARY 15TH.

10:20AM 22 THEN I'D LIKE TO SET THE HEARING, THE STANDALONE HEARING
10:20AM 23 THAT I SPOKE ABOUT FOR THE MOTION IN LIMINES, LET'S DO THAT ON
10:20AM 24 FRIDAY, JANUARY 22ND, FRIDAY, JANUARY 22ND.

10:20AM 25 MS. KRATZMANN, CAN THAT BE AT 10:00 A.M. PACIFIC TIME?

10:20AM 1 THE CLERK: YES, YOUR HONOR, THAT CAN BE AT

10:20AM 2 10:00 A.M.

10:20AM 3 THE COURT: WE'LL DO THAT.

10:20AM 4 TUESDAY, FEBRUARY 9TH WILL BE THE DUE DATE FOR THE

10:20AM 5 PRETRIAL CONFERENCE STATEMENT.

10:20AM 6 AND THEN WE'LL MOVE THE PRETRIAL CONFERENCE. AND I KNOW

10:20AM 7 YOU'RE VERY EAGER TO GET THIS DONE. I KNOW THAT YOU SCHEDULED

10:20AM 8 THIS ON A HOLIDAY, FEBRUARY 15TH.

10:20AM 9 LET ME TELL YOU, AND I CHECKED WITH STAFF, AND THE

10:20AM 10 PREFERENCE WOULD BE TO DO IT THE FOLLOWING DAY, THE 16TH,

10:20AM 11 PLEASE, SO WE'LL DO IT ON FEBRUARY 16TH, FEBRUARY 16TH.

10:20AM 12 MS. KRATZMANN, WHAT TIME SHOULD THAT BE?

10:21AM 13 DO WE HAVE 10:00 A.M. AVAILABLE, TUESDAY?

10:21AM 14 THE CLERK: JUST ONE MOMENT, YOUR HONOR. I NEED TO

10:21AM 15 SWITCH MY SCREEN.

10:21AM 16 FEBRUARY 16TH AT 10:00 A.M., YOUR HONOR, IS AVAILABLE.

10:21AM 17 THE COURT: ALL RIGHT. THANK YOU. 10:00 A.M.

10:21AM 18 AND JURY SELECTION, AND I KNOW YOU HAD -- AND THANKS FOR

10:21AM 19 YOUR MEMO, YOU SUGGEST TRIAL DATES AND JURY SELECTION DATES.

10:21AM 20 I'M GOING TO SET THE -- I SAY THE TRIAL WILL BEGIN MARCH 9TH,

10:21AM 21 MARCH 9TH. IT BEGINS WITH JURY SELECTION. SO THE JURY

10:21AM 22 SELECTION WILL START MARCH 9TH, MARCH 9TH AT 9:00 A.M.

10:21AM 23 THE PURPOSE OF THE PRETRIAL CONFERENCE, AS YOU KNOW, IS TO

10:21AM 24 DISCUSS OTHER MATTERS, AND I ANTICIPATE THAT WE WILL AT THE

10:22AM 25 PRETRIAL CONFERENCE DISCUSS WHAT MEASURES BOTH SIDES ARE

10:22AM 1 ANTICIPATING TO USE FOR THE JURY SELECTION.

10:22AM 2 AND LET ME JUST BE CLEAR AND NOT OPAQUE. I ANTICIPATE

10:22AM 3 THAT YOU'LL HAVE SOME JURY QUESTIONNAIRES THAT YOU MIGHT

10:22AM 4 PREPARE FOR THIS CASE THAT WILL INCLUDE CERTAIN ISSUES,

10:22AM 5 INCLUDING TIMING ISSUES SO WE CAN APPROPRIATELY TIME SCREEN THE

10:22AM 6 VENIRE AND GET THAT ISSUE OUT OF THE WAY. SO WE'LL DISCUSS HOW

10:22AM 7 THAT WILL WORK.

10:22AM 8 AS YOU SEE, MARCH 9TH THE TRIAL WILL START WITH THE JURY

10:22AM 9 SELECTION. IT MAY BE THAT THE JURY SELECTION WILL TAKE US A

10:22AM 10 DAY OR TWO OR THREE, THAT IS, TO FRIDAY THE 12TH.

10:22AM 11 I ANTICIPATE THAT EVIDENCE WILL START ON MARCH 16TH,

10:22AM 12 MARCH 16TH, OR AT LEAST OPENING STATEMENTS WOULD BEGIN

10:22AM 13 MARCH 16TH, TUESDAY, MARCH 16TH.

10:22AM 14 I TELL YOU THAT IN ADVANCE NOW, IF WE GET A JURY BY

10:23AM 15 3:00 P.M. ON MARCH 9TH, DO I ASK YOU TO MAKE YOUR OPENING

10:23AM 16 STATEMENTS ON THE 10TH? WELL, WE'LL SEE. THAT'S WHAT THE

10:23AM 17 PRETRIAL CONFERENCE WILL BE.

10:23AM 18 BUT I'M ANTICIPATING THAT WEEK WE'LL PROBABLY ENGAGE THE

10:23AM 19 PROCESS OF JURY SELECTION SUCH THAT WE CAN START FRESH THE WEEK

10:23AM 20 FOLLOWING.

10:23AM 21 SO THAT'S THE SCHEDULE THAT I'M GOING TO ADVANCE.

10:23AM 22 YOU'LL -- AS I SAID, I'LL POST THIS SCHEDULE, AND YOU'LL GET A

10:23AM 23 POSTING OF IT, AND YOU'LL HAVE IT ELECTRONICALLY FOR YOU.

10:23AM 24 THAT'S WHAT I WANTED TO ADVANCE FOR YOU NOW.

10:23AM 25 ANYTHING THAT ANYONE ELSE WANTS TO SAY IN REGARDS TO

10:23AM 1 MS. HOLMES'S TRIAL? AND I'LL TALK ABOUT MR. BALWANI IN JUST A
10:23AM 2 MOMENT.

10:23AM 3 MR. LEACH: YOUR HONOR, APART FROM MY DISAPPOINTMENT
10:23AM 4 I HAVE EXTRA TIME OVER THE HOLIDAYS AND I'M NOT WORKING ON THE
10:23AM 5 HOLIDAY IN FEBRUARY, THAT'S FINE WITH THE GOVERNMENT.

10:23AM 6 THE COURT: ALL RIGHT. THANK YOU, MR. LEACH. I
10:24AM 7 APPRECIATE THAT CONCESSION. THANK YOU.

10:24AM 8 MR. WADE: WE AGREE WITH THE GOVERNMENT. I THINK
10:24AM 9 THAT'S FAIR AND REASONABLE, YOUR HONOR. THANK YOU.

10:24AM 10 THE COURT: ALL RIGHT. THANK YOU, MR. WADE.

10:24AM 11 SO AS TO MR. BALWANI, I'M THINKING THAT WE SHOULD SET A
10:24AM 12 STATUS CONFERENCE FOR MR. BALWANI, MR. COOPERSMITH. I'D LIKE
10:24AM 13 TO DO THAT SOME TIME IN DECEMBER, PLEASE.

10:24AM 14 MS. KRATZMANN, I THINK IF YOU COULD FIND A DATE, EITHER
10:24AM 15 THE FIRST OR SECOND WEEK. I DON'T WANT TO GO BEYOND THE SECOND
10:24AM 16 WEEK OF DECEMBER FOR THAT PURPOSE.

10:24AM 17 THE CLERK: YES, YOUR HONOR.

10:24AM 18 ARE THE PARTIES AVAILABLE DECEMBER 8TH AT 10:00 A.M.?
10:24AM 19 THAT'S A TUESDAY.

10:24AM 20 MR. COOPERSMITH: YES, YOUR HONOR. ONE QUESTION,
10:24AM 21 THOUGH. I THINK WE HAVE AN AUGUST 31ST CONFERENCE SCHEDULED.
10:24AM 22 IS THAT STILL ON CALENDAR?

10:24AM 23 THE COURT: THANK YOU FOR THAT. MY INTENT IS TO
10:24AM 24 VACATE THAT.

10:25AM 25 MR. COOPERSMITH: UNDERSTOOD. YES, YOUR HONOR.

10:25AM 1 MR. LEACH: YOUR HONOR, DECEMBER 8TH IS FINE WITH
10:25AM 2 THE GOVERNMENT.

10:25AM 3 THE COURT: OKAY. LET'S DO THAT.

10:25AM 4 SHOULD THAT BE AT 10:0 A.M., MS. KRATZMANN?

10:25AM 5 THE CLERK: YES, YOUR HONOR, 10:00 A.M.

10:25AM 6 THE COURT: OKAY. ALL RIGHT. THANK YOU. I THINK
10:25AM 7 WE'VE ACCOMPLISHED EVERYTHING WE NEEDED TO DO THIS MORNING.

10:25AM 8 ANYTHING ELSE, MR. COOPERSMITH, MR. CAZARES AN BEHALF OF
10:25AM 9 YOUR CASE, YOUR CLIENT?

10:25AM 10 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

10:25AM 11 THE COURT: ALL RIGHT. THANK YOU.

10:25AM 12 MR. WADE, ANYTHING ELSE ON BEHALF OF YOU OR YOUR TEAM?

10:25AM 13 MR. WADE: NOTHING, YOUR HONOR. THANK YOU.

10:25AM 14 THE COURT: THANK YOU. MR. LEACH, ANYTHING FURTHER?

10:25AM 15 MR. LEACH: YOUR HONOR, IN LIGHT OF THE PREPARATION
10:25AM 16 THAT STILL NEEDS TO TAKE PLACE AND IN LIGHT OF THE LIMITS THAT
10:25AM 17 WE'RE ALL UNDER COVID-19, I THINK IT'S APPROPRIATE TO EXCLUDE
10:25AM 18 TIME FOR EFFECTIVE PREPARATION FOR MS. HOLMES'S THROUGH THE
10:25AM 19 TRIAL DATE THAT THE COURT IS ABOUT TO SET AS WELL AS
10:25AM 20 MR. BALWANI THROUGH THE DECEMBER 8TH HEARING.

10:26AM 21 THE COURT: THANK YOU. AND THE COURT DOES FIND THAT
10:26AM 22 IT IS APPROPRIATE TO EXCLUDE TIME BASED ON THE COURT'S
10:26AM 23 RESETTING OF THE SCHEDULES TO ALLOW FOR EFFECTIVE PREPARATION
10:26AM 24 OF COUNSEL.

10:26AM 25 LET ME ASK, MR. WADE, ANY OBJECTIONS TO THE COURT

10:26AM 1 EXCLUDING TIME?

10:26AM 2 MR. WADE: NO OBJECTION, YOUR HONOR.

10:26AM 3 THE COURT: THANK YOU.

10:26AM 4 MR. COOPERSMITH, ANY OBJECTION FOR THE COURT EXCLUDING

10:26AM 5 TIME?

10:26AM 6 MR. COOPERSMITH: YOUR HONOR, IF IT'S OKAY WITH THE

10:26AM 7 COURT, THE LAST TIME WE SUBMITTED A STIPULATION WITH MR. LEACH,

10:26AM 8 WITH THE GOVERNMENT EXCLUDING TIME, WE HAD EXCLUDED TIME

10:26AM 9 THROUGH AUGUST 31ST BECAUSE WE ANTICIPATED THERE WOULD BE A

10:26AM 10 STATUS CONFERENCE.

10:26AM 11 WHAT I'D LIKE TO DO -- I HAVE NOT HAD A CHANCE TO DISCUSS

10:26AM 12 THAT WITH MR. BALWANI BECAUSE WE DIDN'T REALIZE THAT WOULD COME

10:26AM 13 UP.

10:26AM 14 IF WE COULD HAVE A DAY TO CONSULT WITH MR. BALWANI, AND

10:26AM 15 THEN WE'LL WORK WITH MR. LEACH TO SUBMIT A STIPULATION IF WE IN

10:26AM 16 FACT AGREE TO EXCLUDE THE TIME. THAT SHOULD JUST BE A DAY OR

10:27AM 17 TWO.

10:27AM 18 THE COURT: WELL, SHOULD I LEAVE THE -- THANK YOU

10:27AM 19 FOR THAT. I APPRECIATE YOUR CANDOR.

10:27AM 20 SHOULD I LEAVE THEN THE AUGUST 31ST DATE ON INCLUDING THE

10:27AM 21 EXCLUSION OF TIME AND THEN WAIT FOR YOUR STIPULATION TO EXTEND

10:27AM 22 THAT TO ANOTHER DATE?

10:27AM 23 MR. COOPERSMITH: YOUR HONOR, JUST BECAUSE I DON'T

10:27AM 24 WANT TO PREJUDGE IT, THAT WOULD WORK, BUT I ANTICIPATE THAT IF

10:27AM 25 WE SUBMIT THE STIPULATION WITH THE GOVERNMENT THEN THE COURT

10:27AM 1 WOULD GO AHEAD AND VACATE THE AUGUST 31ST DATE AS YOU SAID; IS
10:27AM 2 THAT CORRECT?

10:27AM 3 THE COURT: THAT MIGHT -- I APPRECIATE THAT. THAT
10:27AM 4 MIGHT CREATE AN INTERRUPTION IN THE TIME, THOUGH.

10:27AM 5 MR. LEACH?

10:27AM 6 MR. LEACH: YOUR HONOR, I THINK IT WOULD BE PRUDENT
10:27AM 7 TO KEEP THE AUGUST 31ST DATE ON CALENDAR FOR NOW. I'M HOPEFUL
10:27AM 8 THAT MR. COOPERSMITH AND I WILL REACH AN AGREEMENT TO AN
10:27AM 9 APPROPRIATE STIPULATION AND IN THAT STIPULATION, IF WE DO REACH
10:27AM 10 AGREEMENT, WE COULD PROPOSE THAT THE 31ST DATE BE VACATED AND
10:27AM 11 RESET FOR THE 8TH.

10:27AM 12 BUT TIME IS EXCLUDED THROUGH THE 31ST. I THINK IT'S WISE
10:28AM 13 TO KEEP THAT ON CALENDAR FOR NOW JUST SO WE DON'T LOSE THAT.

10:28AM 14 BUT I'M HOPEFUL THAT WE'LL HAVE AN APPROPRIATE STIPULATION
10:28AM 15 WITH MR. COOPERSMITH WHICH WE COULD SUBMIT SHORTLY.

10:28AM 16 THE COURT: OKAY. WELL, I'D BE SURPRISED IF YOU
10:28AM 17 HADN'T. ALL COUNSEL HAVE BEEN COOPERATIVE THROUGHOUT THIS
10:28AM 18 PROCESS HERETOFORE.

10:28AM 19 SO LET ME -- MS. KRATZMANN, I AM NOT GOING TO VACATE -- I
10:28AM 20 AM GOING TO SET ASIDE THAT PREVIOUS ORDER. I WILL NOT VACATE
10:28AM 21 THE AUGUST 31ST DATE. THAT WILL REMAIN ON CALENDAR ALONG WITH
10:28AM 22 THE TIME EXCLUSION TO AUGUST 31ST. AND SHOULD THERE BE A NEED
10:28AM 23 TO CHANGE THAT BY WAY OF STIPULATION, WE'LL RECEIVE THAT, AND
10:28AM 24 IT WILL INCLUDE ANY TIME EXCLUSION GOING FORWARD THEN. I'LL
10:28AM 25 RECEIVE THAT.

10:28AM	1	THE CLERK: UNDERSTOOD.
10:28AM	2	THE COURT: OKAY. DOES THAT WORK FOR YOU,
10:28AM	3	MR. COOPERSMITH?
10:28AM	4	MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.
10:28AM	5	THE COURT: ANYTHING FURTHER?
10:28AM	6	MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.
10:28AM	7	THANK YOU.
10:28AM	8	THE COURT: ALL RIGHT. THANK YOU. IT'S GOOD SEEING
10:28AM	9	YOU ALL. PLEASE BE SAFE, CONTINUE TO BE SAFE, YOU AND YOUR
10:29AM	10	FAMILIES AND EVERYONE, AND I WISH YOU GOOD HEALTH AND I KNOW
10:29AM	11	WE'LL BE SEEING EACH OTHER AGAIN SOON.
10:29AM	12	THANK YOU VERY MUCH.
10:29AM	13	MR. BOSTIC: THANK YOU, YOUR HONOR.
10:29AM	14	MR. DOWNEY: THANK YOU, YOUR HONOR.
10:29AM	15	THE CLERK: COURT IS ADJOURNED.
10:29AM	16	(COURT CONCLUDED AT 10:29 A.M.)
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3 CERTIFICATE OF REPORTER
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7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

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IRENE RODRIGUEZ, CSR, RMR, CRR
17 CERTIFICATE NUMBER 8074
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19 DATED: SEPTEMBER 16, 2020
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